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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,478	04/26/2002	Pamela Rudenia Caldwell		6666

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EXAMINER

STEIN, STEPHEN J

ART UNIT PAPER NUMBER

1775

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N .

10/007,478

Applicant(s)

CALDWELL, PAMELA RUDENIA

Examiner

Stephen J Stein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 2-21 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

2. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 12 recites the limitation "The artificial animal of claim 10 wherein said connecting wire is electric fence wire". This limitation lacks antecedent basis in the claims.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 2-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation a "malleable, hollow frame" is new matter.

#### ***Claim Rejections - 35 USC § 103***

5. Claims 2-7, 11-13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,451,436 (Shelleman) in view of US 3,163,418 (Myers).

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Shelleman teaches an ornamental animal with a horse-like head comprising a hollow wire frame (malleable) with a wire backbone piece (14), a connecting wire connected to the wire backbone piece (14') and four legs attached to the backbone piece (see abstract and Figure 1). Shelleman fails to teach that the ornamental animal has stuffing filling the hollow frame or a cloth covering.

Myers teaches simulated animal comprising an H-Frame and burlap cloth envelop which is stuffed with a suitable stuffing material such as straw (See col. 2, lines 4-37).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add stuffing and a cloth covering as taught by Myers to the ornamental animal as disclosed by Shelleman because it would allow for the ornamental animal to simulate a real animal. With regard to the claimed materials of the backbone, legs and pole, it further would have been obvious to one of ordinary skill in the art to use, wood, wooden dowels, and rebar, since these are materials conventionally used to make ornamental crafts.

6. Claims 14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shelleman in view of Myers as applied to claims 2 and 15 above, and further in view of US 3,848,869 (Morrison).

As stated above Shelleman in view of Myers disclose limitations of 2 and 15, but does not disclose the presence of rockers attached to the four legs or that the artificial animal is a "hobby-horse".

Morrison discloses a riding toy of the "hobby horse" type comprising a simulated animal with rockers attached to the four legs (See abstract, Figure 1 and col. 2, lines 35-68). Morrison further teaches that the attachment of the rockers allows the simulated animal to be used as

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rocking type toy (col. 1, lines 49-57). Therefore, it would have been obvious to a person or ordinary skill in the art at the time of the invention to add rockers to the simulated animal disclosed by Shellemann in view of Myers because it would allow the animal to be used as a rocking type toy.

7. Claims 8-10 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shellemann in view of Myers as applied to claim 2 and 15 above, and further in view of US 4,174,420 (Anolick).

As stated above Shellemann in view of Myers disclose limitations of 2 and 15, but does not disclose webbing attached to the hollow malleable frame.

Anolick teaches upholstered furniture and that it is conventionally known that upholstered articles contain a frame, which may be open or closed, padding or stuffing, and a covering (col. 1, lines 25-33). Anolick further teaches that if the frame is open (such as the open frame disclosed by Shellemann in view of Myers) the article contains a webbing (col.1, lines 25-34).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add webbing on the hollow frame prior to the adding the covering, since Anolick teaches that it is conventional to add webbing over a hollow frame under the covering. With regard to the claimed material used as the webbing, it is further obvious to one of ordinary skill in the art at the time of the invention to use 10aw electrical wire since it is a material conventionally used in the manufacture of ornamental crafts.

***Response to Arguments***

8. Applicant has cancelled claim 1 and drafted new claims 2-21. Therefore, applicants arguments are moot in view of new rejections made over newly cited art of record.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

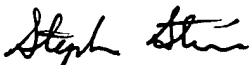
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Stein whose telephone number is 572-272-1544. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m. If the attempts to reach the examiner are unsuccessful, the examiner's supervisor, Deborah Jones can be reached by dialing 571-272-1535. The official fax number is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 4, 2005



Stephen J. Stein  
Primary Examiner  
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